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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/722,978

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EXAMINER

HOGUE, GARY CHAPMAN

ART UNIT

PAPER NUMBER

3611

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/722,978	Applicant(s) BEKKER, ALEXANDER	
	Examiner Gary C. Hoge	Art Unit 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 16-28, 30-34, 37-49, 52, 54-61, 87 and 89-93 is/are pending in the application.
- 4a) Of the above claim(s) 24-27, 38-41 and 59-61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 16-23, 28, 30-34, 37, 42-49, 52, 54-58, 87 and 89-93 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/8/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 24-27, 38-41 and 59-61 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 15, 2005.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 37 and 89-91 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 37, this claim depends from claim 29, which has been cancelled.

Regarding claims 89-91, these claims depend from claim 88, which has been cancelled.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 11, 16, 20, 28, 30, 31 and 87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pulliam (1,517,456) in view of Krug (4,226,036).

Pulliam discloses an identification tag system for attachment to the wrist of a human (the age of the wearer is irrelevant to the patentability of the tag), the system comprising an

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identification tag **1** having a long dimension and a short dimension, the tag including a pair of slots **3, 4** therethrough and means for receiving information **25** associated with the wearer; an elongated wristband **6** and related fastening means **8** for configuring and retaining the wristband in a closed loop shape of selected circumferential size wrapped about a wrist of the wearer, wherein the wristband is threaded through the slots; and wherein the identification tag is mounted onto the exterior of the wristband such that the long dimension of the tag extends generally perpendicular to a long dimension of the wristband. However, the tag disclosed by Pulliam is not rectangular. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tag rectangular because it has been held that changes in the shape of an article are a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed article is significant. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Further, the tag and the wristband disclosed by Pulliam are made of thin metal. Krug teaches that it was known in the art to make a wristband and tag from an elastomeric material (column 2, lines 48-53, and column 3, lines 12-16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the wristband and tag disclosed by Pulliam from an elastomeric material, as taught by Krug, as a matter of design choice, and in order to make them lighter, cheaper, and more flexible. Finally, the recitation that the closed loop is of a “small diameter” is considered to be met by Pulliam because no frame of reference is given in the claim, and the diameter of the wristband disclosed by Pulliam is small compared to many things.

Regarding claims 11 and 49, the elastomeric material from which the band and tag are made is inherently both relatively stiff and comparatively comfortable and compliant, especially

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given that the thing compared to which it is relatively stiff is not specified, and given that the thing to which it is comparatively comfortable and compliant is not specified.

Regarding claim 20, it would have been obvious to include a plurality of tags on the wristband disclosed by Pulliam because it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claim 31, the information is presented in human-readable form.

4. Claims 5-10, 32-34, 92 and 93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pulliam (1,517,456) in view of Krug (4,226,036), as applied to claim 2, above, and further in view of Grose et al. (2002/0054940).

Pulliam discloses the invention substantially as claimed, as set forth above. However, the tag disclosed by Pulliam contains only human-readable information. Gross teaches that it was known in the art to provide an identification tag with both human-readable information and machine-readable information. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the tag disclosed by Pulliam with both human-readable information and machine-readable information, as taught by Gorse, in order to allow the tag to be read by a machine.

Regarding claims 8, 9, 32, 33 and 92, Grose discloses both a barcode and an RFID chip as the machine-readable information.

Regarding claims 10, 34 and 93, Grose teaches the band may be of multiple ply construction (paragraph 0027) and that “the RFID tag **12** may be of any variety known to those skilled in the art, and is sized such that it may be embedded in the band **10**” (paragraph [0039]).

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5. Claims 17-19, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pulliam (1,517,456) in view of Krug (4,226,036), as applied to claims 1 and 42, respectively, above, and further in view of Duncan (6,058,637).

Pulliam discloses the invention substantially as claimed, as set forth above. However, it is not known how the tags are formed. Duncan teaches that it was known in the art to form identification tags such that a plurality of them are detachably interconnected to each other, and to feed those tags through a printer (i.e., a processor station), to print information thereon. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a plurality of the tags disclosed by Pulliam, and to attach them detachably together, as taught by Duncan, in order to enable efficient processing of multiple tags through a printer.

Regarding claim 19, a roll is a very long, very narrow sheet.

Regarding claim 23, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make some of the tags larger than the others because such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

6. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pulliam (1,517,456) in view of Krug (4,226,036), as applied to claim 20, above, and further in view of McDermott (3,965,589).

Pulliam discloses the invention substantially as claimed, as set forth above. However, the tags disclosed by Pulliam are not color coded. McDermott teaches that it was known in the art to

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color-code identification tags. See column 7, lines 10-24. It would have been obvious to one having ordinary skill in the art at the time the invention was made to color code the tags disclosed by Pulliam, as taught by McDermott, in order to enable rapid visual identification of information conveyed by the various colors.

7. Claims 42-45, 49 and 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pulliam (1,517,456) in view of Krug (4,226,036) and Huddleston et al. (5,653,472).

Pulliam discloses an identification tag system for attachment to the wrist of a human (the age of the wearer is irrelevant to the patentability of the tag), the system comprising an identification tag **1** having a long dimension and a short dimension, the tag including a pair of slots **3, 4** therethrough and means for receiving information **25** associated with the wearer; an elongated wristband **6** and related fastening means **8** for configuring and retaining the wristband in a closed loop shape of selected circumferential size wrapped about a wrist of the wearer, wherein the wristband is threaded through the slots; and wherein the identification tag is mounted onto the exterior of the wristband such that the long dimension of the tag extends generally perpendicular to a long dimension of the wristband. However, the tag disclosed by Pulliam is not rectangular. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tag rectangular because it has been held that changes in the shape of an article are a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed article is significant. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Further, the tag and the wristband disclosed by Pulliam are made of thin metal. Krug teaches that it was known in the art to make a wristband and tag from an elastomeric material (column 2, lines 48-

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53, and column 3, lines 12-16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the wristband and tag disclosed by Pulliam from an elastomeric material, as taught by Krug, as a matter of design choice, and in order to make them lighter, cheaper, and more flexible. Finally, the recitation that the closed loop is of a “small diameter” is considered to be met by Pulliam because no frame of reference is given in the claim, and the diameter of the wristband disclosed by Pulliam is small compared to many things. It is inherently understood that the wristband and tag disclosed by Pulliam are meant to be manufactured in quantities greater than one. However, it is not known whether the plurality of tags are detachably interconnected to each other. Huddleston teaches that it was known in the art to provide a printer sheet having a plurality of tags associated with a wristband interconnected to each other. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a sheet of the type taught by Huddleston for the tags disclosed by Pulliam, in order to apply information to the tags in a single pass of the printer. The printer constitutes a processor station for applying the information.

Regarding claim 49, the elastomeric material from which the band and tag are made is inherently both relatively stiff and comparatively comfortable and compliant, especially given that the thing compared to which it is relatively stiff is not specified, and given that the thing to which it is comparatively comfortable and compliant is not specified.

Regarding claim 45, the information is presented in human-readable form.

8. Claims 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pulliam (1,517,456) in view of Krug (4,226,036) and Huddleston et al. (5,653,472), as applied to claim 42, above, and further in view of Grose et al. (2002/0054940).

Pulliam discloses the invention substantially as claimed, as set forth above. However, the tag disclosed by Pulliam contains only human-readable information. Gross teaches that it was known in the art to provide an identification tag with both human-readable information and machine-readable information. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the tag disclosed by Pulliam with both human-readable information and machine-readable information, as taught by Gorse, in order to allow the tag to be read by a machine.

Regarding claims 46 and 47, Grose discloses both a barcode and an RFID chip as the machine-readable information.

Regarding claim 48, Grose teaches the band may be of multiple ply construction (paragraph 0027) and that “the RFID tag **12** may be of any variety known to those skilled in the art, and is sized such that it may be embedded in the band **10**” (paragraph [0039]).

9. Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pulliam (1,517,456) in view of Krug (4,226,036) and Huddleston et al. (5,653,472), as applied to claim 42, above, and further in view of McDermott (3,965,589).

Pulliam discloses the invention substantially as claimed, as set forth above. However, the tags disclosed by Pulliam are not color coded. McDermott teaches that it was known in the art to color-code identification tags. See column 7, lines 10-24. It would have been obvious to one having ordinary skill in the art at the time the invention was made to color code the tags disclosed by Pulliam, as taught by McDermott, in order to enable rapid visual identification of information conveyed by the various colors.

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10. Claims 55-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pulliam (1,517,456) in view of Krug (4,226,036) and Huddleston et al. (5,653,472), as applied to claim 42, above, and further in view of Duncan (6,058,637).

Pulliam discloses the invention substantially as claimed, as set forth above. However, it is not known how the tags are formed. Duncan teaches that it was known in the art to form identification tags such that a plurality of them are detachably interconnected to each other, and to feed those tags through a printer (i.e., a processor station), to print information thereon. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a plurality of the tags disclosed by Pulliam, and to attach them detachably together, as taught by Duncan, in order to enable efficient processing of multiple tags through a printer.

Regarding claim 56, a roll is a very long, very narrow sheet.

Regarding claim 58, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make some of the tags larger than the others because such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Response to Arguments

3. Applicant's arguments filed May 8, 2008 have been fully considered but they are not persuasive.

Applicant argues that “the limitation that the identification tag system is for an infant or small child is eminently important to the invention as claimed herein.” That may be, but it is not

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patentably significant. The use to which Applicant intends to put his wristband does not distinguish it from prior art wrist bands. Further, as stated above, although the loop formed by Applicant's wristband is said to form a "small diameter," no frame of reference is given. The prior art wristbands form closed loops, the diameters of which are small compared to many things. Still further, as pointed out in the Office action mailed October 2, 2007, even if that feature had been recited in such a way as to distinguish over the prior art (e.g., by reciting a specific diameter), it still would not be patentable because it is known in the art to provide wristbands for infants that are smaller than the wristbands used for adults. See, e.g., U.S. Pat. No. 5,479,797 to Peterson, column 5, lines 23-27.

Contrary to Applicant's assertion, Pulliam is not non-analogous art. It has been held that the determination that a reference is from a nonanalogous art is twofold. First, we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. *In re Wood*, 202 USPQ 171, 174. In this case the reference is within the field of the inventor's endeavor, namely wristbands for human beings.

Regarding Vlrebome, the fact that this patent solves the problem in a different way than Applicant did does not necessarily indicate that Applicant's solution is patentable over the rest of the prior art. Further, the fact that the Pulliam reference was cited during the prosecution of the Vlrebome application does not indicate that the prior art tried and failed to solve the problem Applicant addresses. The Pulliam reference was also cited during the prosecution of U.S. Pat. No. 4,766,683 to Fast, which concerns a tag for a mailbag. In both Vlrebome and Fast, it seems likely that Pulliam was cited because it shows a tag that is attached with its long direction

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perpendicular to the long direction of the band to which it is attached, a feature common to both of those references. The mere fact that those references cited Pulliam during their prosecution does not indicate a long-felt need that was solved by the instant invention.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary C. Hoge whose telephone number is (571) 272-6645. The examiner can normally be reached on 5-4-9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary C. Hoge/
Primary Examiner, Art Unit 3611